

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

**IN RE: ETHICON, INC. PELVIC REPAIR)
SYSTEM PRODUCTS LIABILITY LITIGATION)
)
) **MDL NO. 2327**
)
THIS DOCUMENT RELATES TO:)
)**

**UNOPPOSED MOTION FOR QUALIFIED PROTECTIVE ORDER
CONCERNING PRODUCTION OF CERTAIN INFORMATION
MAINTAINED BY GOVERNMENT THIRD-PARTY PAYORS**

Bertram & Graf, L.L.C. (referred to herein as “Plaintiffs’ Counsel”), as counsel for certain plaintiffs in this MDL 2327, file this Unopposed Motion for entry of a Qualified Protective Order Concerning the Production of Certain Information Maintained by Third Party Payors, as set forth in the proposed order attached hereto as Exhibit A.

Plaintiffs’ Counsel and Defendant Ethicon, Inc. and other related companies (“Ethicon”) have entered into a Confidential Master Settlement Agreement (the “MSA”) to resolve the claims related to the implantation of Ethicon’s Pelvic Repair Products as defined in the MSA. Pursuant to the MSA, Plaintiffs’ Counsel has retained Shapiro Settlement Solutions as Lien Administrator (“Administrator”). Under the provisions of the MSA, the Administrator is responsible for identifying and resolving all liens that have been or may be asserted by Federal Medicare (part A and Part B), each State and/or Territory Medicaid Agency, the U.S. Department of Veterans’ Affairs, the U.S. Department of Defense, TRICARE, and Indian Health Services (collectively “Governmental Third-Party Payors”) asserted against settlement payments, which are related to the implantation of any of Ethicon’s Pelvic Repair Products as defined in the MSA.

Plaintiffs' Counsel and the Administrator believe that receipt of certain health information maintained by Governmental Third-Party Payors is necessary for the Administrator to resolve the liens. The information required by the Administrator contains protected health information and individually identifiable health information, some of which may be protected from disclosure pursuant to the Health Insurance Portability and Accountability Act of 1996 (42 USC §1320d *et seq.*) and the regulations promulgated thereunder (45 CFR §§ 160, 164 *et seq.*) ("HIPAA").

The attached proposed order will allow Governmental Third-Party Payors to transmit protected health information of the MSA claimants directly to the Administrator to assist in the resolution of asserted liens. Governmental Third-Party Payors producing HIPAA-protected information pursuant to this Order would be deemed to fall within the safe harbor of HIPAA for court-ordered production of personal health information, 45 C.F.R. § 164.512(e)(1), and similar provisions of State law, if any. The proposed order also provides for destruction of any protected health information produced by Governmental Third-Party Payors to the Administrator at the conclusion of the administration of the Bertram & Graf-Ethicon Qualified Settlement Fund approved by this Court on February 14, 2018.

CONCLUSION

Plaintiffs' Counsel believe that such a Qualified Protective Order is necessary to facilitate the resolution of Governmental Third-Party Payors liens and, therefore, respectfully requests that the Court enter the proposed Order attached hereto as Exhibit A.

This 14th day of February, 2018.

Respectfully Submitted,

/s/ Benjamin A. Bertram

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Counsel for the Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

By: /s/ Benjamin A. Bertram
Benjamin A. Bertram